IN THE QUEEN'S BENCH.

APPEAL SIDE.

Julie Léocadie Defoy,

APPELLANT,

vs.

Ambroise Légaré *et al.*,

RESPONDENTS.

APPELLANT'S CASE.

Decem^r 1861

SECRETAN & DUNBAR,
For Appellant.

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IN THE QUEEN'S BENCH.

APPEAL SIDE.

PROVINCE OF CANADA,
Lower Canada.

IN THE QUEEN'S BENCH.

APPEAL SIDE.

No.

Julie Léocadie Defoy,

(*Defendant in the Court below,*)

APPELLANT,

and

Ambroise Légaré, & *al.*,

(*Plaintiffs in the Court below,*)

RESPONDENTS.

CASE OF THE APPELLANT.

THE present Appeal has been instituted to obtain the reversal of a judgment rendered in the Circuit Court in and for the District of Quebec, by Mr. Justice Stuart, condemning the Defendant to pay to the Plaintiffs the sum of £19 10 5½ with interest and costs.

The circumstances under which that amount was claimed to be due, are as follows:

"Mrs. Lecourt, (Dame Julie Léocadie Defoy, the Defendant in the Court below and the present Appellant,) being desirous of obtaining a small piece of ground stocked with firewood, purchased from the Plaintiff in the Court below and present Respondents, the lot of land described in the deed of sale in this cause filed, dated the 9th September 1859, as lot No. 7. Before buying it, her son, Mr. Lecourt, who acted as her agent in this matter, visited the lot shewn to him by the said Respondents and with which he was quite satisfied. Some time afterwards, having ascertained that persons were cutting down timber on the lot in question without his, or his mother's permission, he proceeded to the place and there found several individuals so employed who, to his no small surprise, informed him that the lot shewn him by the Respondents and by them sold to his mother, belonged to a man of the name of Magwood who owned it under a Sheriff's title, and that it had never belonged to, or been in the possession of the said Respondents. Thereupon, Mr. Lecourt went to the Respondents and remonstrated with them on their conduct towards his mother in thus selling her a property which was not theirs. This they denied, and, as is established by the evidence of Poulin the Appellant's witness, they subsequently pretended to make the Appellant a formal delivery of the same piece of ground they had, previously to the sale, shewn her son and which it has since been made to appear is not, and never has been, lot No. 7, but is a lot known as No. 6. The lot which in reality is lot No. 7, is perfectly worthless, is not the lot

which was shewn, and pretended to be delivered, to Mr. Lecourt and would be of no use whatever to the Appellant, who, with justice, conceives she should not be compelled to receive what she never bought or intended to buy, and much less to pay for the same."

In addition to what is above stated the Appellant is desirous of drawing the attention of the Court to the following clause contained in the deed of the sale by the Respondents to the Appellant ;

" The present sale and conveyance is thus made and granted for and consideration " of the price or sum of fifty pounds of lawful current money of this Province, together " with interest thereon at six per cent per annum from and since the fourth day of March " last, which the purchaser doth promise to pay on account and acquit of the said " vendors in manner following, viz., the sum of ten pounds nineteen shillings and one " penny on demand unto the Seignior of Beauport for arrears of rent on the said land, " as costs of suit, incurred in proceedings taken for the recovery thereof against the said " vendors, and the balance of thirty nine pounds and eleven pence with interest as afore- " said unto William Venner, of the City of Quebec, Merchant, towards liquidation of " the mortgage held by him upon the said lot of land under deed before us as aforesaid, " on the fourth day of March one thousand eight hundred and fifty seven, the said sum " payable one half on the fourth day of March next, and the other half on the fourth " day of March one thousand eight hundred and sixty one. And for securing the pay- " ment of which said sum of fifty pounds and interest, the said Purchaser doth hereby " specially mortgage and hypothecate the lot of land aforesaid by privilege of ***Bailleur*** " ***de fonds***, but without prejudice to the existing mortgages."

By their declaration, the Plaintiff's allege, " Que les dits Demandeurs ont droit de " reclamer la dite somme: quoique stipulé payable à un nommé William Venner aux " termes du dit acte et dont il ne peut avoir aucune action directe contre la dite Défende- " resse, n'étant pas son créancier personnel, le tout avec dépens. Pourquoi les deman- " deurs demandent jugement en conséquence avec intérêt et dépens."

Mr. Justice Stuart bases his judgment on the assumed fact " that the " sale by the Plaintiffs to the Defendant appears to have been followed by " a tradition of the same." If, by this is meant that the sale of the lot mentioned in the said deed, viz; lot number 7 has ever " been followed by a tradition of the same " lot number 7, there is error in the allegation ; as it is, beyond doubt, established by the evidence adduced in the cause, that it was lot number 6, of which there was such tradition, and not lot number 7, which, it would appear, never in fact, belonged to the Plaintiffs.

Quebec, December 1860.

SECRETAN & DUNRAR,

For Appellant.